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Ontario. The Consolidated hearings Act, 1981.

CH-91-09(F)

CITY OF NIAGARA FALLS - MOUNTAIN ROAD LANDFILL FUNDING
DECISION. 1992.

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The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-91-09 (F)

CITY OF NIAGARA FALLS - MOUNTAIN ROAD LANDFILL

FUNDING DECISION

IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, R.S.O. 1990, c. C-29, as amended; the *Environmental Protection Act*, R.S.O. 1990, c. E-19; the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N-2; the *Ontario Water Resources Act*, R.S.O. 1990, c. O-40; the *Expropriations Act*, R.S.O. 1990, c. E-26; the *Intervenor Funding Project Act*, R.S.O. 1990, c. I-13;

AND IN THE MATTER OF an application by the Corporation of the City of Niagara Falls for an extension of the height of the Mountain Road landfill site and the widening of the buffer area around the landfill site.

BEFORE: Grace Patterson - Chair

Gary Harron - Member

DATED at TORONTO this 29TH day of DECEMBER, 1992

2300 Yonge Street
Suite 1201
Toronto, Ontario M4P 1E4
Tel: (416) 323-4806

APPEARANCES:

Harold Elston - for Niagara Ratepayers for a Healthy Environment

Cynthia Findlay - for the City of Niagara Falls

REASONS FOR DECISION

Introduction

The Funding Panel has one application for funding to consider. This is made on behalf of Niagara Ratepayers for a Healthy Environment (the applicant), which was granted intervenor status at the preliminary hearing on this matter on October 28, 1992.

The City of Niagara Falls (the proponent), has not objected to being named Funding Proponent. The Funding Panel's role, therefore, was restricted to considering whether the intervenor funding applicant met the requirements noted in section 7 of the *Intervenor Funding Project Act*, and whether the amounts sought for each category were reasonable. It was agreed that the issues affect a significant segment of the public and affect the public interest. The proponent did not argue that the criteria under s.7(2) were not satisfied. The Funding Panel has reviewed the application and finds that the requirements of s.7 are satisfactorily met.

The original application provided a total requested budget of \$250,756.64. Subsequent to its submission, the proponent's counsel met with the applicant's counsel and negotiated some agreements with respect to certain categories of funding. The Funding Panel is grateful to the two parties for having undertaken that exercise and having arrived at a mutual understanding of the respective positions and in some cases specific sums for categories of expense.

Given the fact that there had been considerable discussion between the proponent and the applicant, and that the issues were clear and well-argued, the Panel gave an oral decision after a short break at the end of the hearing. These reasons amplify and formalize the oral decision.

Considerations

1. Length of Hearing

The original application calculated funding on the basis of a hearing which would consume 60 days. That had been the proponent's rough guess of the length of the hearing, but at the end of the preliminary hearing the parties had estimated 20-30 hearing days including final argument and site visits. The Hearing Panel set an objective of 16-20 hearing days. On that basis, the proponent and the applicant agreed to base funding on a 20 day hearing, but wished to make provision for the cost of legal services and consultant fees for an additional 10 days. The applicant would have preferred that 30 days simply be funded without any reference to a hold-back. The Funding Panel, given that the Hearing Panel projected 20 days of hearing, would have based its funding award on that estimate and required the applicant to rely on a supplementary funding application for any further funds.

The compromise suggested by the proponent, i.e., a holdback of 10 days time for counsel and/or consultants, which would save the time and cost associated with a supplementary funding application and further council deliberations, has merit. Therefore, the holdback proposal is approved, with the additional 10 days to be funded if the Hearing Panel orders the release of the funds. The parties assume that this will be virtually automatic if the hearing exceeds 20 days and the applicant has spent its funds responsibly to that date.

2. Level of Detail

The application for funding was not detailed in many respects. For that reason, the proponent and the applicant agreed to standard rates for consultants to arrive at spending limits for the various issues. This approach seemed agreeable to both parties, and was in their view preferable to having a two-stage funding process with its attendant delays.

Subsequent to its original application, the applicant sought an estimate for a preliminary work plan from the consulting firm of Conestoga-Rovers & Associates Limited. That estimate provided a different breakdown of spending needs for hydrogeology-groundwater and site design, operations and engineering. The proponent disputed the amounts sought in both of these funding categories. Since hydrogeology-groundwater is a major issue in the hearing, the Funding Panel has awarded the amount sought in this category (now described as hydrogeology/hydrology).

For the second category, however, there appeared to be some duplication with hydrogeology work, and issues were not clearly defined and prioritized. It also appeared to the Panel that some of the matters could be dealt with by members of the applicant intervenor group, since they concerned nuisance issues which would require first-hand witnesses (given that this is an existing site expansion) rather than expert evidence. For these reasons the Funding Panel reduced the amount sought by 25% and required a detailed work plan for the remaining amount.

The detailed work plan should include the major areas of work to be performed, their order of importance, and the anticipated rate of spending. This is to be provided to the Board (with a copy to the Financial and Capital Management Branch of the Ministry of the Environment) by December 31, 1992.

3. Information Provided to Proponent

The proponent asked that it be provided with copies of invoices provided by the applicant's lawyer and consultants so that it would be in a position to report to its ratepayers on the spending related to the hearing. The applicant objected to having invoice copies provided, but was willing to have an "invoice summary" sent to the proponent with each request for payment. The Funding Panel believes that this latter arrangement serves the needs of both parties and therefore requires that a copy of the invoice summary be sent by the applicant to the proponent at the same time that it is sent to the Finance and Capital Management Branch for processing.

4. Categories of Expenses

Legal fees were calculated on a ratio of 1.5 days preparation time for each day of hearing. Preparation days are based on 8 hours of work per day, while hearing days are calculated on the basis of 10 hours per day. Hearing preparation was agreed as 45 days (based on 30 days of hearing). Therefore, if the hearing exceeds 20 days the 10 hour hearing days, along with the additional preparation days approved, will be assumed to include any preparation necessary and no further preparation time will be funded. The figures for the original 20 days of funding for legal fees and the additional 10 days, if necessary, are shown in Schedule A.

Funding for **land-use planning, transportation/traffic, waste diversion, and ecological impacts** was effectively negotiated. All of these appear to amount to relatively peripheral issues in terms of the need for funding.

As mentioned earlier, **site design, operations, and engineering** need further elaboration in the detailed workplan to be provided by December 31, 1992. The Board asked that the proponent and the applicant check with the Ministry of the Environment to determine what evidence it would present so that we could determine whether duplication would be likely. Ms. Findlay reported back that MOE witnesses would discuss air emissions, hydrogeology, hydrology, site operations emphasizing nuisance impact (as opposed to detailed engineering) and possibly planning issues related to the Niagara Escarpment Plan. We believe it would be helpful to the applicant in providing its detailed plan if Mr. Elston consulted with MOE counsel to determine whether their interests coincide in some respects so that each party can allocate its resources accordingly.

Although we have provided the requested funding for **hydrogeology/hydrology** we believe it would also be useful for the applicant to confer with the Ministry to determine whether their interests coincide and some appropriate division of evidence can be arranged.

5. Accountability

The applicant originally proposed that funds be paid to a member of the applicant, but the proponent suggested that funds be paid into Mr. Elston's trust account (after invoices are submitted and approved). The applicant agreed, on condition that it approve payments from the trust account before they are made. That arrangement is therefore endorsed by the Board.

DECISION

1. Intervenor funding is allocated to Niagara Ratepayers for a Healthy Environment with details provided in Schedule A which is attached to and forms part of this Decision.
2. Niagara Ratepayers for a Healthy Environment is allocated the amount of funds specified in Schedule A. Schedule A is attached to and forms part of this Decision.
3. Harold Elston is responsible for the accounting of the funds awarded.
4. Claims for funds are to be submitted in accordance with the Environmental Assessment Board's General Principles for the Submission of Claims.

5. Financial materials filed in these proceedings are to be used only by the Funding Panel and parties to the funding proceedings and only for the purposes of these proceedings. These financial materials filed with the Board are not to be used by any person for any other purpose.

DATED at TORONTO this 29TH day of DECEMBER, 1992.

"G. Patterson"

G. Patterson, Chair

"G.A. Harron"

G.A. Harron, Member

<u>LEGAL</u>	<u>HOURS</u>	<u>RATE/HOURS</u>	<u>LEGAL FEES</u>	<u>GST @ 7%</u>	<u>TOTAL</u>	
		\$	\$	\$		
Intermediate counsel	560	75.38	42,212.80	2,954.90	45,167.70	(1)
Intermediate counsel (on holdback)	100	75.38	7,538.00	527.66	8,065.66	(2)
Disbursements			4,221.28	295.49	4,516.77	
Disbursements (on holdback)			753.80	52.77	806.57	(2)
Total Legal (including holdback)			<u>54,725.88</u>	<u>3,830.81</u>	<u>58,556.69</u>	

EXPERTS

<u>AREA OF STUDY</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>EXPERT FEES</u>	<u>DISBURSEMENTS</u>	<u>GST (7%) Fee + Disb</u>	<u>TOTAL PER EXPERT</u>	
		\$	\$	\$	\$	\$	
1. Land Use Planning	25	90.00	2,250.00	225.00	173.25	2,648.25	
2. Transportation/Traffic	20	90.00	1,800.00	180.00	138.60	2,118.60	
3. Waste Diversion	15	90.00	1,350.00	135.00	103.95	1,588.95	
4. Hydrogeology/Hydrology	325	\$50 - \$100	29,950.00	2,995.00	2,306.15	35,251.15	(3)
5. Ecological Impacts	20	90.00	1,800.00	180.00	138.60	2,118.60	
6. Site Design, Operations, Engineering	247.50	\$50 - \$100	22,800.00	2,280.00	1,755.60	26,835.60	
7. Discretionary (on holdback)	100	90.00	9,000.00	900.00	693.00	10,593.00	(2)
Total Experts (including holdback)			<u>68,950.00</u>	<u>6,895.00</u>	<u>5,309.15</u>	<u>81,154.15</u>	

DISBURSEMENTS

	<u>DISB</u>	<u>GST (7%)</u>	<u>TOTAL</u>
Typing	500.00	35.00	535.00
Photocopying	2,500.00	175.00	2,675.00
Printing	2,500.00	175.00	2,675.00
Total(Disbursements)	<u>5,500.00</u>	<u>385.00</u>	<u>5,885.00</u>

SUB-TOTAL ALLOCATION:

9,524.96 145,595.84

Other sources of funding:
G.S.T. Rebate FactorAMOUNT OF TOTAL ALLOCATION ON HOLDBACK:

1,273.43 19,465.23

TOTAL ALLOCATION:9,524.96 145,595.84PERSON/FIRM RESPONSIBLE FOR FUNDS:
(cheques will be issued in these names)Harold Elston
Goodman and Carr
Suite 2300, 200 King Street West
Toronto, Ont
M5H 3W5
(416) 595-2300

Notes:

- (1) Fees are based on a 20 days of hearing at 10 hrs/day and 45 days preparation at 8 hrs/day.
 (2) On holdback. Provision is made for payment if hearing continues past 20 days.
 (3) Rates vary according to personnel performing work



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